Supreme Court, U.S.
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No. 01-81

IN THE

Supreme Court of the United States

ERIC B. RYAN and HILLARY A. RYAN,

Petitioners,

v.

JENIA ANNE JOSEPHINE JOHNSON and
THOMAS J. BITAR, Guardian *ad litem*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE NEW JERSEY SUPREME COURT

Joint Brief in Opposition for Respondents Jenia Anne Josephine Johnson and Thomas J. Bitar, Esq., Guardian *ad litem* for the born and unborn children of Jenia Anne Josephine Johnson

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QUESTIONS PRESENTED[1]

1. Where the New Jersey Parentage Act provides that "a judgment . . . determining the existence of a parent child relationship is determinative for all purposes . . .", was not the New Jersey Supreme Court's construction of the statute as creating a substantive rule of law barring third party collateral attacks upon such a judgment and in holding that Petitioners could not contest a judgment entered in 1965 determining that Jenia Anne Josephine Johnson was the daughter of J. Seward Johnson, Jr. correct and consistent with due process of law?

2. Where Petitioners' attempted challenge to the 1965 judgment determining the existence of the parent-child relationship was not made until 1996, 35 years after the birth of Jenia Anne Josephine Johnson, was not the New Jersey Supreme Court's construction of the New Jersey Parentage Act's statute of limitations requiring a proceeding to challenge the established parentage of a child to be brought within 23 years of the child's birth as barring Petitioners' challenge correct and consistent with due process of law?

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1. The statement of "Question Presented" by Petitioners (Pet. i) is not an accurate statement of the ruling of the New Jersey Supreme Court or of the nature of the record and the proceedings before the New Jersey Supreme Court.

PARTIES

Petitioners, Eric B. Ryan and Hillary A. Ryan, and Respondents, Jenia Anne Josephine Johnson and Thomas J. Bitar, Guardian ad Litem for the born and unborn children of Jenia Anne Josephine Johnson.

The list of parties identified by Petitioners is not correct. (Pet. ii).

Petitioners and Respondents were the only parties to the proceedings before the New Jersey Supreme Court. Counsel for the children of J. Seward Johnson, Jr. was permitted to present oral argument (App. to Pet. 1) but his clients were not de jure parties to the proceedings. (*Id.* at 9).

The others listed as parties by Petitioners were involved in the Ninth Intermediate Accounting proceedings in the trial court. Some of them were involved in the proceedings before the Appellate Division of the Superior Court. None of them was involved in the proceedings before the New Jersey Supreme Court and none of them is a proper party in the proceedings before the United States Supreme Court in connection with Petitioners' Petition for Certiorari. *See* Rules of the Supreme Court of the United States 12.6.

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PRELIMINARY STATEMENT

Jenia Anne Josephine Johnson ("Jenia" or "Jenia Johnson") and Thomas J. Bitar, Guardian *ad litem* for the born and unborn children of Jenia Johnson submit this joint Brief in Opposition to the Petition for Writ of Certiorari filed by her cousins, Eric B. Ryan and Hillary A. Ryan ("Petitioners" or the "Cousins Ryan"), to review a decision and Judgment of the New Jersey Supreme Court.

The New Jersey Supreme Court ruled in favor of Respondents, holding: (1) that, under the New Jersey Parentage Act, a 1965 Judgment of the New Jersey Superior Court adjudicating Jenia Johnson to be the daughter of J. Seward Johnson, Jr. ("Seward, Jr.") was determinative for all purposes and not susceptible to third-party collateral attack by Petitioners; and (2), alternatively, that Petitioners' challenge to the Judgment was barred by the statute of limitations provision of the New Jersey Parentage Act, a ruling which was not addressed in the Petition.

COUNTER STATEMENT OF THE CASE

1.

This case involves the construction of a New Jersey statute, the New Jersey Parentage Act, N.J.S.A. 9:17-38 to -59 ("the Parentage Act"), by the New Jersey Supreme Court ("the Court") and, respectfully, offers no question worthy of review by the United States Supreme Court.

The New Jersey Supreme Court construed both Sections 53(a) and 45(b) of the Parentage Act. N.J.S.A. 9:17-53(a), -45(b).

Section 53(a) provides that "a judgment or order of the court . . . determining the existence or nonexistence of the parent child relationship is determinative for all purposes. . . ." The Court construed Section 53(a) to mean that a judgment establishing parent-child status is conclusive and not susceptible to third party collateral attack.

Section 45(b) is the limitations provision of the Parentage Act and requires a proceeding to be brought to determine parentage within 23 years of the birth of the child. The Court construed Section 45(b) to bar challenges to the "established parentage of others . . ." if not brought within the 23 year period.

The Court held:

1.) that under Section 53(a), a 1965 judgment adjudicating Jenia Johnson to be the child of Seward, Jr. established her status and foreclosed the third-party attack launched against the judgment and its adjudication of paternity by Petitioners; and

2.) that the challenge of Petitioners which sought to defeat the established parentage of Jenia was barred by Section 45(b) because not initiated within 23 years of Jenia's 1961 birth.[1]

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1. The New Jersey Supreme Court and the trial court both agreed that any contest over parentage had to be pursued, if at all, under the Parentage Act. App. 11, 111.

2.

Jenia Johnson was born to J. Seward Johnson Jr. ("Seward Jr.") and Barbara Johnson on January 11, 1961 during their marriage. App. 3.[2] Jenia's birth and baptismal certificates both name Seward Jr. as her father. App. 2, 3.

On June 28, 1962, Seward Jr. filed for divorce from Barbara Johnson in the New Jersey Superior Court, Chancery Division. App. 4. Seward Jr.'s paternity of Jenia became a contested issue among many other contested issues. App. 4-5. Ultimately, Seward Jr.'s parentage of Jenia was adjudicated by the Superior Court and formally incorporated into the Judgment Nisi of divorce. App. 2, 5-6, 95.

More specifically, at a hearing on March 8, 1965 in connection with the divorce proceeding, the court made the following adjudication:

> There are two children of this marriage one, Bruce Johnson, . . . the other Jennie Anne Josephine Johnson, who was born January 11, 1961
>
> * * *
>
> I find one more thing: That Jennie Anne Josephine Johnson was duly born of the marriage.

App. 5, 95.

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2. References ("App") to the Appendix are to the Appendix filed with the Court by Petitioners.

The Judgment Nisi of divorce dated March 12, 1965 contains a provision confirming and formalizing these findings, stating:

> That the paternity of the plaintiff as the father of the infant, Jenia Johnson, born January 11, 1961, is hereby adjudicated.

In addition, during the divorce proceedings, Seward Jr. executed a written acknowledgment of his paternity of Jenia.[3] App. 2, 5, 95.

Moreover, some 12 years later, on September 28, 1977, Seward Jr. again affirmatively represented to the Superior Court of New Jersey that he was Jenia's father in a petition which he signed and filed with the court requesting that the court appoint a guardian *ad litem* to represent her interests in connection with an intermediate accounting of the 1961 Trust described below. App. 6.

3.

On December 20, 1961, J. Seward Johnson Sr. created an irrevocable trust ("the 1961 Trust" or "Trust"). App. 3, 4, 6, 93. The 1961 Trust provides for income to charities until the earlier of January 10, 1997, or the death of the last of enumerated "children" and "grandchildren" of the grantor. *Id.* Jenia is included by name as one of these measuring lives.

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3. The written acknowledgment, dated March 3, 1965, reads as follows: "The undersigned, John Seward Johnson, Jr. (sometimes known as J. Seward Johnson, Jr.), hereby unequivocally acknowledges paternity of Jennie Anne Josephine Johnson (sometimes referred to as "Kookie" Johnson), born of Barbara E. Johnson at Princeton, New Jersey, on January 11, 1961." App. 2, 5, 95.

App. 3. Thereafter the trustees of the Trust (the "Trustees") and their successors are authorized, but not required, to "sprinkle" income and corpus among such of the grantor's four children, their spouses and their issue as the Trustees in their absolute and uncontrolled discretion shall determine to be in the best interests of such beneficiaries. Provision is made for the ultimate termination of the trust and payment of the balance of the trust property, if not previously exhausted, upon the death of all of the grantor's named "children" and "grandchildren", again including Jenia by name. App. 3, 4, 6, 93.

On March 22, 1996, the trustees filed a verified complaint for settlement of the Trustees' Ninth Intermediate Accounting and other relief, including determination of the class of eligible beneficiaries and the definition of the terms "spouse" and "issue." App. 7, 96.

Other than the requested relief regarding the determination of the class of eligible beneficiaries generally, Jenia's status was not a question raised by the Trustees in their complaint. As stated above, in the trust instrument Jenia was named as a grandchild of the grantor as well as one of the measuring lives of the Trust. She was consistently named as one of the "children of John Seward Johnson, Jr.," in each of the intermediate judicial accountings covering the 34 years of the Trust's administration.[4] App. 95. The nature of her

4. In ¶ 44 and ¶ 46 of the verified complaint in the ninth intermediate accounting, the Trustees continued to list Jenia among the named grandchildren of the grantor, stating that their understanding of who the beneficiaries are "stems from the long course of dealings Plaintiffs, and their predecessors, have had with the Johnson family in Plaintiffs' and their predecessors' role as Trustees of the Trust."

interest was specifically described by the Trustees as being the same as every other grandchild of the grantor, that is, a "discretionary interest in principal and income after January 10, 1997." Petitioners were parties to each of the intermediate accountings by virtual representation, through guardians *ad litem*, or in later accountings directly in their own behalf.

Petitioners (as well as Jenia's father, Seward, Jr., and his present family) did not challenge Jenia's inclusion in the class of beneficiaries until some 35 years after her birth when the Trustees filed their complaint seeking approval of their Ninth Intermediate Accounting of the Trust. App. 95. The basis of the challenge stemmed largely from Seward Jr.'s denial of paternity decades after entry of the standing judgment in the Superior Court of New Jersey to the contrary and after his other affirmations that Jenia was his daughter. App. 95-96.

At the trial court's initial case management conference on May 1, 1996, the challenge to Jenia's inclusion as a member of the class of beneficiaries on paternity grounds was first raised.[5] App. 7, 96. The Trustees suggested to the court that the challenge might possibly be determined as a matter of law, thereby avoiding the lost time and expense of discovery and related proceedings. *Id.* Counsel for the challengers agreed that possible resolution as a legal issue should appropriately be addressed by the court. The court then directed Jenia's attorneys, to bring the legal issues

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5. Petitioners are not excluded from the class of possible beneficiaries of the 1961 Trust by reason of Jenia's inclusion. Rather, they have exactly the same discretionary interest that they have always had. Their claimed deprivation was that in Jenia's absence there would be one less interest the Trustees would have to consider.

before the court by filing a motion for partial summary judgment.[6] *Id.*

On June 6, 1996, Jenia's attorneys filed the court directed motion for partial summary judgment seeking confirmation, as a matter of law, of Jenia's status as a beneficiary under the Trust. By opinion of August 2, 1996, *see* App. 90-114 and by Order entered on August 19, 1996, the trial court granted the relief sought and determined that "Jenia's lineage is established as a matter of law,"[7] App. 112. The trial court

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6. Notwithstanding their understanding that the issues were to be framed as a matter of law, Petitioners (and Seward, Jr. as well) filled their papers filed in the trial court with what can only be characterized as scandalous hearsay, irrelevant to the legal issues involved. Petitioners chose to revisit the acrimonious 1965 divorce proceedings between Jenia's mother and father. The process continued during the New Jersey appellate proceedings where conjecture and hearsay were erroneously styled as fact. Jenia did not respond to this outrageous conduct not only so as not to dignify it but also because it was immaterial to resolution of the relevant legal issues and contrary to the trial court's direction that those issues be addressed as a matter of law. Here, Petitioners have continued the practice, suggesting erroneously that there was a factual record developed by the trial court and going on to make unsupported allegations unfavorable to Jenia and her mother. We urge the Court to ignore these incompetent materials.

7. The Trial court's determination is consistent with New Jersey law. N.J.S.A. 3B:1-2 defines issue as "lineal descendants, natural or adopted, of all generations . . . with the relationship of parent and child at each generation being determined by the definition of child and parent." N.J.S.A. 3B:1-1 defines child as one "entitled to take by intestate succession from the parent whose relationship is involved. . . ." Petitioners' statement in their Petition that the term "issue" under New Jersey law has traditionally meant blood or

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considered the Parentage Act to be the exclusive method for determining paternity and further found that Section 45(b) of the Act, the 23-year statute of limitations provision of New Jersey's Parentage Act (N.J.S.A. 9:17-45(b)), was a statute of repose which barred the challenge of Petitioners and of Seward, Jr. and his family.[8] Therefore, the court concluded that "Jenia is an eligible beneficiary under the terms of the 1961 Trust." App. 112.

The Appellate Division of the New Jersey Superior Court reversed the trial court's finding that the Parentage Act statute of limitations did not apply and that a factual record was necessary to determine whether the grantor intended Jenia to be in the class of beneficiaries. App. 28-89.

The New Jersey Supreme Court unanimously reversed the Appellate Division agreeing with, and reinstating, the result and conclusions reached by the trial court. App. 1-27. The Supreme Court accepted the trial court's view of the Parentage Act's limitation on actions, finding that the stated period of repose would bar anyone who was, as here, "seeking to defeat the established parentage of others."

(Cont'd)
biological issue is simply not true. *In re Wehrhane's Estate*, 128 A.2d 681 (N.J. 1957) relied upon by Petitioners in this regard was in fact overruled by a tandem of later New Jersey cases. *In re Coe*, 201 A.2d 571 (N.J. 1964); *In the Matter of Thompson*, 250 A.2d 393 (N.J. 1969).

8. Seward, Jr. and his family were also barred on grounds of res judicata, collateral estoppel and judicial estoppel. The bar was affirmed by the Appellate Division. The cross-petition for certification filed by Seward, Jr.'s children with the New Jersey Supreme Court seeking review of this ruling as it applied to them was denied.

App. 14-15.[9] The court also construed the Parentage Act as requiring the judgment entered in the divorce proceeding some 30 years before to be unassailably determinative of Jenia's status as Seward Jr.'s daughter because, in the words of the statute, the judgment must be regarded as "determinative for all purposes." App. 13, 15-16; N.J.S.A. 9:17-53a. Accordingly, the court found Jenia's status as Seward, Jr.'s child to be unassailable and held that Jenia was an eligible beneficiary of the 1961 Trust.[10] App. 27.

Addressing Petitioners' assertion that they had been denied due process because they had had no say in the establishment of Jenia's status, the New Jersey Supreme Court found that the Parentage Act made the 1965 adjudication of Jenia's parentage conclusive, i.e., that it "cements Jenia's status as an eligible beneficiary under the 1961 trust . . ." App. 23-26. The Court referred to the decision of the United States Supreme Court in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989) where a procedural and substantive due process challenge by the natural father to a

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9. In addressing the statute of limitations issue, the New Jersey Supreme Court construed its earlier decision in *Wingate v. Estate of Ryan*, 693 A.2d 457 (N.J. 1997), and the 1997 amendments to both the Parentage Act and the Probate Code codifying *Wingate*, as permitting "parties seeking to establish or confirm their parentage . . ." to proceed "as opposed to those [such as Petitioners] seeking to defeat the established parentage of others." App. 14-15. Petitioners' suggestion that *Wingate* and the statutory amendments somehow support the legitimacy of their challenge to the 1965 Judgment establishing Jenia's parental status (Pet. 7, 11-12) is clearly erroneous and directly contrary to the ruling of the New Jersey Supreme Court in this very case.

10. Neither Seward Jr. nor his other children have attempted to join in this Petition and thus are bound by the decision of the New Jersey Supreme Court.

determination that his child was the daughter of another was rejected on the basis of a California statute which conclusively presumed a child born to a cohabiting husband and wife during their marriage to be a child of the marriage. App. 24-25. The United States Supreme Court declared the statute to be a substantive rule of law and the question of actual parentage to be irrelevant.[11] The New Jersey Supreme Court opined that the economic interests of the Cousins Ryan in this case occupied "a lower place in the hierarchy of rights as compared to a putative father's right to the parent-child relationship . . ." as in the *Michael H.* case, and thus went on to observe that the circumstances justifying the "setting aside the due process claim . . ." in Jenia's case were even "more compelling than those that existed in the *Michael H.* case." App. 25.

REASONS FOR DENYING THE WRIT

Petitioners themselves describe the decision in *Michael H.* as holding "that the Constitution does not bar a state from establishing as a substantive rule of law that a child born within wedlock is *per se* the lawful child of the husband, and, under such circumstances, from deeming paternity not to be an adjudicatory fact to be contested in litigation. . . ." (Pet. 9). The description is accurate and the same principles and conclusions apply here.

The New Jersey Parentage Act provides that "[t]he judgment or order of the court . . . determining the existence

11. Though the opinion is a plurality option, at least five Justices of this Court agreed with this result. Justice Stevens', in his concurring opinion, agreed with the majority in rejecting the due process challenge by the natural father to a conclusive parental determination and took issue with the related question of visitation rights.

or nonexistence of the parent and child relationship is determinative for all purposes." N.J.S.A. 9:17-53a. The statutory command, as the similar directive of the California statute in *Michael H.* with respect to a conclusive presumption for children born during wedlock, amounts to a substantive rule of law making judicial adjudication of parentage conclusive for all purposes. The New Jersey Supreme Court so construed the statute and ruled "that the Parentage Act essentially forecloses a third party attack upon Jenia's parentage." App. 15-16. In a word, the New Jersey Supreme Court construed the Parentage Act to require such judgments be considered final for *all* purposes. And, consistent with *Michael H.*, such a construction and requirement assuredly passes constitutional muster.

Parenthetically, the New Jersey Supreme Court ruling is consistent with long-established principles of law, noted with approval both by the New Jersey Supreme Court, App. 9-10, 12, and the United States Supreme Court, *Michael H.* at 123-25, which favor the powerful presumption of legitimacy and with the case law which stands for the socially sound proposition that when members of the spousal unit acknowledge, or are precluded by judicial decree or otherwise from disputing, paternity "for a stronger reason the door should be closed on third persons . . . [lest] the question of status fixed as to family be successively raised and litigated in a number of ordinary suits." *Jenkins v. Aetna Cas. & Ins. Co.*, 158 So. 217, 220 (La. Ct. App. 1935). The vast majority of cases have reached this conclusion for similar sound policy reasons and essentially regard a judgment adjudicating paternity as in the nature of an *in rem* determination not subject to third party collateral attack.[12]

12. *See, e.g., Knauer v. Barnett*, 360 So. 2d 399, 405 (Fla. 1978) (right to dispute legitimacy of child born in wedlock limited

(Cont'd)

As this Court noted, in reiterating a long established principal of law, a judgment determining an individual's

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to husband and wife); *Deatherage v. Phipps*, 441 P.2d 1020, 1023 (Okla. 1967) (where neither husband or wife disputed legitimacy of child born in wedlock, all others were barred from doing so; non-relation third-party in wrongful death suit precluded); *Byrd v. The Travelers Ins. Co.*, 275 S.W.2d 861, 863-4 (Tex. Civ. App. 1955, writ ref'd n.r.e.) ("If the father renounces the right to bastardize his alleged son, either expressly or tacitly, it is extinguished and can never thereafter be exercised by anyone . . ."; father and mother of decedent barred where prior divorce adjudicated legitimacy); *Jenkins v. Aetna Cas. & Sur. Co.*, 158 So. 217, 220 (La. Ct. App. 1935) ("If the husband and his heirs cannot dispute . . . legitimacy . . . , for a stronger reason the door should be closed on third persons in actions for money or property"); *In re Vainio*, 943 P.2d 1282 (Mont. 1997) (siblings lacked standing to bring paternity action); *Succession of Saloy*, 10 So. 872, 876 (La. 1892) (if father does not dispute paternity, "the door is forever closed" to others); *Theis v. City of Miami*, 564 So. 2d 117, 119 (Fla. 1990) (employer precluded from challenging legitimacy of child born in wedlock); *Gonzales v. Pacific Greyhound Lines*, 214 P.2d 809, 811 (Cal. 1950) (employer of decedent-father, collateral heirs and non-relative beneficiaries cannot question legitimacy of child born in wedlock); *Favre v. Celotex Co.*, 139 So. 904, 905 (La. Ct. App. 1932) (employer of decedent-father denied standing to dispute parentage of child born in wedlock); *Beard v. Vincent*, 141 So. 862, 863-65 (La. 1932) (collateral heirs of decedent barred from challenging parentage of children born during marriage); *Clement v. Merchants Nat'l Bank*, 493 So. 2d 1350, 1352 n.2 (Ala. 1986) (in affirming denial of motion for blood tests, court chided parties for not raising standing questions for collateral relative); *Speight v. Wheeler*, 310 So. 2d 716, 719 (Miss. 1974) (heirs of decedent precluded from attacking legitimacy); *Johnson v. Johnson*, 395 So. 2d 640, 641 (Fla. Dist. Ct. App. 1981) (absent a bar, relitigation of paternity issue resolved in divorce proceedings would be "chaotic;" requiring children and former wives to submit to blood tests would be humiliating).

personal status "is operative and conclusive as to all the world." *Atherton v. Atherton*, 181 U.S. 155, 168 (1901); *see also In re Howard*, 76 U.S. 175, 183 (1869).[13]

As stated above, and as an alternative basis for its ruling, the New Jersey Supreme Court also construed the statute of limitations provision in the Parentage Act to bar any challenge by Petitioners to Jenia's status as the daughter of Seward, Jr. App. 14-15. In their Petition, the Cousins Ryan have neither addressed nor contested this alternative basis for the ruling of the New Jersey Supreme Court. In this regard, this Court has consistently followed the lead of *Campbell v. Holt*, 115 U.S. 620 (1985) by adopting "as a working hypothesis, as a matter of constitutional law, the view that statutes of limitation go to matters of remedy, not to destruction of fundamental rights." *Chase Securities Corp.*

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13. Giving conclusive effect to prior adjudications of paternity contained in divorce decrees like the 1965 Judgment Nisi is consistent with the well established principle that: (1) a "decree of divorce is a conclusive adjudication of everything except the jurisdictional facts upon which it is founded . . ." *Williams v. North Carolina*, 325 U.S. 226, 232 (1945); *Zieper v. Zieper*, 103 A.2d 366, 370 (N.J. 1954); *see also Chrzanowski v. Chrzanowski*, 472 A.2d 1128, 1131 (Pa. Super. Ct. 1984); (2) that because the decree is tantamount to a judgment in rem, "it is binding upon all the world . . ." *In re Estate of Lee*, 253 P. 145, 147 (Cal. 1927); *see Williams*, 325 U.S. at 232 ("divorce decree partakes of some of the characteristics of a decree in rem" and conclusively adjudicates matter); *see also Greenspan v. Greenspan*, 18 A.2d 283, 289 (N.J. Ch. 1941) ("divorce suit is a suit in rem" and a decree stemming from such suit "operates immediately and absolutely"); and (3) that the decree cannot be collaterally attacked by a "stranger" to the proceedings. *Cook v. Cook*, 342 U.S. 126, 127 (1951); *In re Lee's Estate*, 253 at 147; *Byrd v. The Travelers Ins. Co.*, 275 S.W.2d 861, 863-4 (Tex. Civ. App. 1955); *Johnson v. Johnson*, 395 So. 2d 640.

v. Donaldson, 325 U.S. 304, 315 (1945). The concept of due process was established to protect the taking of life, liberty or property, *id.*, and does not extend to "entitl[ing] every civil litigant to a hearing on the merits in every case. The State may erect reasonable procedural requirements for triggering the right to an adjudication, be they statutes of limitations, or, in an appropriate case, filing fees," *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 437 (1982).

The Parentage Act's 23 year statute of repose clearly sets forth a generous time frame after which a child's established status, even if it were otherwise vulnerable, can not be challenged by anyone.

Both bases of the New Jersey Supreme Court's decision involve the construction and interpretation of New Jersey statutes, which are consistent with long established constitutional principles and sound common law precedents. This case, in its application of those principles and precedents, should not occupy the attention of this Court.

CONCLUSION

For all the foregoing reasons, Respondents respectfully urge the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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